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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,249	03/02/2004	Michael A. Herold	HED.P.US0006	3984
26360	7590	07/27/2004	EXAMINER	
RENNER, KENNER, GREIVE, BOBAK, TAYLOR & WEBER FIRST NATIONAL TOWER FOURTH FLOOR 106 S. MAIN STREET AKRON, OH 44308			ZEADE, BERTRAND	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/792,249		HEROLD, MICHAEL A.	
	Examiner		Art Unit	
	Bertrand Zeade		2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-8,10-11,12-17,19-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6726350. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claims are broader in scope than the U.S. Patent claims and as such inherently include all the limitations of the patent claims

Instant Application #10792249	Claims of reference: U.S. Patent Herold 6726350	Discussion on differences and additional reference(s)
Claim 1	Claims 1-3	Claimed limitations are disclosed

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Claim 2	Claims 2,3	Claimed limitations are disclosed
Claim 3	Claims 1-3	Claimed limitations are disclosed
Claim 4	Claims 1-3	Claimed limitations are disclosed
Claim 5	Claim 1	Claimed limitations are disclosed
Claim 6	Claim 1	Claimed limitations are disclosed
Claim 7	Claim 2	Claimed limitations are disclosed
Claim 8	Claim 3	Claimed limitations are disclosed
Claim 10	Claim 3	Claimed limitations are disclosed
Claim 11	Claim 3	Claimed limitations are disclosed
Claim 12	Claims 3	Claimed limitations are disclosed
Claim 13	Claims 1,2	Claimed limitations are disclosed

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Claim 14	Claims 1-3	Claimed limitations are disclosed
Claim 15	Claims 1-3	Claimed limitations are disclosed
Claim 16	Claims 1,2	Claimed limitations are disclosed
Claim 17	Claim 2	Claimed limitations are disclosed
Claim 19	Claims 1-3	Claimed limitations are disclosed
Claim 20	Claims 1-3	Claimed limitations are disclosed
Claim 21	Claims 1-3	Claimed limitations are disclosed

3. Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6726350 in view of Campman (U.S.6371625).

Claims 1-3 of U.S. Patent No.6726350 disclose the claimed invention except for a convex or concave lens.

However, Campman ('625) discloses all solid-state omni directional luminary and flashlight having:

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Regarding claim 9, the LED (32) can incorporate or have added externally to the LED (32) a convex or a concave lens (25) that produces a focused focal length that is optimal for a particular length of the tube.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the simulated neon-light tube of Herold ('350) with the convex or concave lens taught by Campman ('625), since the concave lens of Campman ('625) would provide a lighting system which will project a well defined beam of light, because the lens in combination with the LEDs project a high resolution spot light.

Allowable Subject Matter

4. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record neither teach nor suggest an opaque sleeve dimensioned to be inserted over the tube, wherein the sleeve having a plurality of openings that allow the light from the tube to be visible only through the openings.

Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bertrand Zeade whose telephone number is 571-272-2387. The examiner can normally be reached on 9:30 AM-5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bertrand Zeade
Examiner
Art Unit 2875



JOHN ANTHONY WARD
JOHN ANTHONY WARD
PRIM EXAMINER